

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-3804-00
PLDarcy

date:

to: Territory Manager Robert Skiba
Attn: Robert Satz, Team Manager

from: District Counsel, Manhattan

subject:

Tax Year Ended [REDACTED]

Consents to Extend the Statute of Limitations
On Assessment

Uniform Issue List # 6501.08-00; 6501.08-17

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This memorandum is in response to your request for advice concerning the proper entity to execute a consent to extend the statute of limitations on assessment for [REDACTED] [REDACTED] for the taxable year ended [REDACTED] and the proper language to be used in the consent. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice. The statute of limitations on assessment is currently set to expire on [REDACTED].

ISSUES

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1. What is the proper entity to enter into consent to extend the statute of limitations on assessment for [REDACTED] ended [REDACTED]?¹

2. What specific language should be used on the consent to extend the statute of limitations on assessment of [REDACTED] ended [REDACTED]?

FACTS

For the taxable year ended [REDACTED], [REDACTED] (" [REDACTED] ") filed a consolidated Federal corporate income tax return. The [REDACTED] was made up of a myriad of corporations. The consolidated parent of the [REDACTED] for the taxable year ended [REDACTED] was [REDACTED].

Between [REDACTED] and [REDACTED], the [REDACTED] and [REDACTED] broke up. [REDACTED] (" [REDACTED] "), [REDACTED] and [REDACTED] acquired various parts of the [REDACTED]. During [REDACTED], [REDACTED] acquired [REDACTED] and a number of subsidiaries, which were part of the [REDACTED]. [REDACTED] remains in existence as a subsidiary of [REDACTED]. During the same period, [REDACTED] and [REDACTED] acquired other former members of the [REDACTED].

DISCUSSION

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment of any tax except estate tax. The Form 872, Consent to Extend the Time to Assess Tax, is

¹ The [REDACTED] also had partnership interests, including an interest in [REDACTED]. The conclusions set forth in this memorandum do not apply to extending the statute of limitations to assess partnership items of the [REDACTED] partnerships. We will gladly provide you advice on extending the statute of limitations to assess partnership items of the [REDACTED] partnerships upon request.

the form generally used by the Service to extend the statute of limitation on assessment.

In the case of a consolidated group, guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment can be found in the consolidated return regulations. Treas. Regs. § 1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name can give waivers and any waiver so given shall be considered as having been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of income tax may be made for the consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. § 1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. See Treas. Reg. § 1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence.

Accordingly, since [REDACTED] survived the break-up of the consolidated group, it is the proper entity to extend the statute of limitations for all the corporate members of the former consolidated group for the prebreak-up year ended [REDACTED]. The name of the taxpayer appearing on the Form 872 should be as follows:

" [REDACTED] (E.I.N. *****)"

In addition, at the bottom of the page, the following language should be added:

"*This is with respect to the consolidated tax liability of [REDACTED] (E.I.N. *****) for the taxable year ended [REDACTED].

GENERAL MATTERS

As a final matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in § 6501(c)(4)(B), requires Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the statute extension. Alternatively, you may advise the taxpayer orally or in some other written form of the § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.

Should you have any questions regarding this matter, please contact Paul Darcy of our office at (212) 264-5473 ext. 256.

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